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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,592	08/09/2001	Syuichi Sekine	040301/0229	3589

22428 7590 08/24/2005

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

WIMER, MICHAEL C

ART UNIT	PAPER NUMBER
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2828

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,592

Applicant(s)

SEKINE ET AL.

Examiner

Michael C. Wimer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/6/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegner (4018998) in view of Tamura (5335368) and Watanabe (D298244).

Regarding Claims 3-8,12,13 and 16, Wegner shows a substantially rectangular communication device with a main casing 22 that includes a microphone disposed thereon; a pivotable device casing 21 including a speaker 30 mounted thereon that is pivotably connected to the main device casing and configured to be pivoted away from the main device casing. No antenna is shown. Wegner teaches in col. 4, second paragraph, that the device may be employed in walkie-talkies and the device will include an antenna and the requisite parts, and necessary electronics in the lower casing part. Necessary electronics does include the transceiver essential for connection to the antenna.

Thus, Tamura is cited as evidence of obviousness and as resolving the level of ordinary skill in the antenna art and shows the casing 10 that houses the transceiver circuitry 11 and also mounts the antenna 20 thereon. It would have been obvious to the skilled artisan to employ the antenna on the lower casing part in Wegner since it includes the RF transceiver circuitry.

Additionally, applicant now claims in Claim 3 that when the user's head is placed against the "speaker", there is a predetermined distance between the head and antenna. Watanabe is cited as resolving the level of ordinary skill in the art, where Fig. 10 clearly shows a pivotable first housing/casing having a speaker and the head of the user is distanced from the antenna when placed near the speaker holes. It would have been obvious to the skilled artisan to employ the pivotable speaker housing in the primary reference devices where the antenna is extended from an end of the housing/casing that contains the electronics/TX/RX and speaker.

Regarding Claims 9 and 10, the main casing has two portions where one (the face portion that mounts the microphone) is thinner than the back portion that houses the electronics. Regarding Claim 11, the particular thicknesses are obvious to the skilled artisan and dependent upon the form factor used and size of the circuitry. Regarding Claim 14, the radiation field is obviously dependent upon the distance from the antenna, and any intervening structures. Thus, the mere pivoting the housings relative to each other changes the RF field.

Regarding Claim 15, the length of the housings would have been obvious to the skilled artisan to change depending upon the circuitry mounted therein.

Regarding Claim 16, a mere pivoting of the housings provides the desired result.

3. Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (D298244).

Regarding Claims 17,18,20,21,22,24 and 26, Watanabe shows in Fig. 10, a radio communication device with a first casing having a speaker, where the grid of apertures are obvious to the skilled artisan as being speaker holes where the user's head is placed, a second casing/housing pivoted relative to the first casing, and a rod antenna on an end of the casing and a microphone, obvious to the skilled artisan, at the lower portion of the same casing, where the first casing is pivoted away from the second casing in such a manner so that there are an infinite number of positions defining angles between the casings, having intersecting planes, as desired. In other words, a skilled artisan recognizes that the casings need not be parallel as shown in Fig. 10.

Regarding Claim 19, the speaker housing in Watanabe, Fig. 10 is near mid-length as recited.

Regarding Claims 20,23 and 25, since the speaker housing in Fig. 10 of Watanabe is capable of being pivoted in many positions, it is obvious to the skilled artisan that the housings and antenna do not need to be parallel and may be at acute angles.

Response to Arguments

4. Applicant's arguments filed 4/6/2005 have been fully considered but they are not persuasive. Specifically, the electronics does include the transceiver section for direct connection to the antenna. A skilled artisan would have found such a suggestion and teaching to be obvious. Watanabe is cited to show the level of ordinary skill in the art where the speaker is placed against the user's head and there is a predetermined

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distance between the head and antenna. Such a condition obtains when pivotable casings are arranged as shown here in the rejections.

No other arguments are applicable to Claims 17-26 since new art has been applied.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wimer whose telephone number is (571) 272-1833. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minsun O. Harvey can be reached on (571) 272-1835. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Michael C. Wimer', is positioned above the printed name.

Michael C. Wimer
Primary Examiner
Art Unit 2828

MCW
8/11/2005